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EXAMINER

BRITTAIN, JAMES R

ART UNIT PAPER NUMBER

3677

DATE MAILED: 07/14/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/857,937

Applicant(s)

DENNIS ET AL.

Examiner

James R. Brittain

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 28 April 2003.
- 2a) ☒ This action is FINAL. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 2,3 and 6-18 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 2,3,6-11 and 13-18 is/are rejected.
- 7) ☒ Claim(s) 12 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☒ The proposed drawing correction filed on 9/30/02 & 4/28/03 is: a) ☒ approved b) ☒ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Substitute Specification***

The substitute specification received September 30, 2002 has been entered.

### ***Drawings***

The drawing changes received September 30, 2002 to Figure 1A and 1B have been approved.

The proposed drawing correction received April 28, 2003, submitted as figures 7 and 8A, is represented "to illustrate the shaft and complementarily curved engaging clamping member" so as to obviate the objection to the drawings under 37 CFR §1.83(a) which stated that "the curved slots (claim 12) in the embodiment with the shaft and complementarily curved engaging clamping member as described in claim 18, which is the species of figure 10" must be shown. The drawing corrections are not approved. Notwithstanding applicant's representation as quoted above, there is no showing of any complementarily curved engaging clamping member in applicant's proposed drawing correction. The clamping member surface is only shown in figure 7 and that surface is shown as being planar. There is no showing of "the curved slots (claim 12) in the embodiment with the shaft and complementarily curved engaging clamping member as described in claim 18, which is the species of figure 10". Applicant also clearly states in the specification that the second embodiment comprising figures 7 to 9 is "unclaimed" (page 8, line 16). "Unclaimed" means it is not claimed, so applicant's effort to rely on "unclaimed" subject matter to show claimed subject matter is an argument without merit.

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The objections to the drawings under 37 CFR §1.83(a) from the previous non-final rejection are reproduced below.

The drawings are objected to under 37 CFR §1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the curved slots (claim 12) in the embodiment with the shaft and complementarily curved engaging clamping member as described in claim 18, which is the species of figure 10, and the supporting surface including one or more pulley shafts (claim 16) in the embodiment with the shaft and complementarily curved engaging clamping member as described in claim 18, which is the species of figure 10, must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

***Claim Rejections - 35 USC § 112***

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claim 16 is rejected under 35 U.S.C. §112, first paragraph, as containing subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. It is unknown how the supporting surface including one or more pulley shafts (claim 16) in the embodiment with the shaft and complementarily

curved engaging clamping member as described in claim 18, which is the species of figure 10, is configured since figure 10 doesn't show the supporting surface of the upper clamping member as being one or more pulley shafts.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. §103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 18, 2, 3, 6, and 7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Huber (US 3099055) in view of Laurisin (US 2079457).

Huber (figures 1-6) teaches webbing tie down assembly structure including an inner frame 20 and an outer frame 16. There are two clamping members 18, 23. One of the clamping members 18 is a cylindrical shaft. There is a tensioning mechanism in the placement of the slots 22 for the clamping member 18 that allow it to move slightly so as to further tension the webbing. The difference is that the clamping member 23 does not have a complementary shape to the cylindrical shaft 18. However, the use of complementary shapes so that the clamping effect is enhanced is well known in the buckle art and Laurisin (figures 5, 6) teaches that it is well known to provide the clamping surface of the frame 19 with a concave curvature to match the shaft 12 so as to better secure the webbing. Laurisin recognizes that friction between the upper portion 19 and the bar 12 increases the holding power of the securement of the webbing 25 (col. 2, lines 23-27). While Laurisin is not used in applicant's field of endeavor and is

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specifically used as a device to measure blood pressure, it is considered to be analogous art because the desirability of maintaining webbing secured under tension is desirable in low tension environments just as well as in high tension environments and the teaching of an increase in friction by the increased surface area created by complementarily curving the clamping surfaces as done by Laurisin is applicable and certainly a teaching of interest in applications of larger scale tension such as that of Huber. It would have been obvious to modify the webbing tie down of Huber so that the clamping member 23 has a complementary shape to the cylindrical shaft 18 in view of the use of complementary shapes being known as desirable to enhance the clamping effect as being well known in the buckle art as evidenced by Laurisin (figures 5, 6) teaching that it is desirable to provide the clamping surface of the frame 19 with a concave curvature to match the shaft 12 so as to better secure the webbing (col. 2, lines 23-27). As to claim 7, the supporting surfaces of the clamping member 23 of Huber and 19 of Laurisin are configured to prevent undue tension supported thereby.

Claims 8-11 and 13 are rejected under 35 U.S.C. §103(a) as being unpatentable over Huber (US 3099055) in view of Laurisin (US 2079457) as applied to claim 7 above, and further in view of Arnold (US 2852827).

Further modification of the tensioning device of Huber so that the cylindrical shaft 18 mounted on the pin is clearly a roller would have been obvious in view of Arnold (figure 5) in which the cylindrical clamping member 21 is a roller (col. 3, line 5) so as to better provide for webbing adjustment.

Claims 14, 15 and 17 are rejected under 35 U.S.C. §103(a) as being unpatentable over Huber (US 3099055) in view of Laurisin (US 2079457) as applied to claim 18 above, and further in view of Zimmerman (US 951355).

Further modification of the tensioning device of Huber so that the hook is mounted to the frame at a pair of securing points would have been obvious in view of Zimmerman (figures 1, 2, 7) in which the hook 31 is mounted to the frame of the tightener structure by two pins 34 extending through spacers 35 so as to better secure the hook 31 to the frame. As to claim 17, the particular choice of a radius of curvature being a minimum of 6.35 mm is seen as a matter of choosing dimensions and the devices of Huber and Laurisin would function equally as well.

#### ***Allowable Subject Matter***

Claim 12 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

#### ***Response to Argument***

With respect to the rejection under 35 U.S.C §112, first paragraph, applicant argues that the “invention includes a number of features, which can be mixed and matched in multiple variations as described and claimed in the application” (remarks, page 2, lines 2-4). Applicant provides no basis for this assertion in the specification. Applicant then proceeds to indicate that support for the subject matter of claim 16 can be found in figure 3 and figure 7 and concludes that the rejection should be obviated. The argument is unpersuasive. The specification provides guidance. The third

embodiment is shown in figures 10 to 12 and provides what is meant by complementarily curved clamping surfaces by the specification directly stating that this embodiment differs from the first embodiment of figures 3 to 5 and the second embodiment of figures 7 to 9 because the complementarily curved clamping surfaces are in particular different from the planar clamping surfaces of the first two embodiments (page 11, lines 4-9). Further, the first embodiment of figures 3 to 5 is unclaimed as stated on page 5, lines 16-17 and the second embodiment shown in figures 7 to 9 is also unclaimed as stated on page 8, line 16. "Unclaimed" means it is not claimed, so applicant's effort to rely on "unclaimed" subject matter to enable claimed subject matter is an argument without merit.

Applicant argues that the device of Laurisin is directed to a very different technical field (remarks, page 4, line 10). While Laurisin is not used in applicant's field of endeavor and is specifically used as a device to help measure blood pressure, it is considered to be analogous art because the desirability of maintaining webbing secured under tension is desirable in low tension environments just as well as in high tension environments and the teaching of an increase in friction by the increased surface area created by complementarily curving the clamping surfaces as done by Laurisin is applicable and certainly a teaching of interest in applications of larger scale tension such as that of Huber. Applicant also argues that that the bar 12 described by Laurisin cannot be regarded as a shaft since it has a flat lower surface (remarks, page 4, lines 17-20), the term "shaft" does not require a completely cylindrical shape. The bar 12 has a round surface and the term "shaft" does not preclude a flat surface over a small

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portion in addition to the round surface nor is there any statement in the claim precluding a flat surface over a small portion of the shaft. Applicant argues that Laurisin fails to recognize the advantage of using a clamping arrangement for distributing the clamping force across a large surface area (remarks, page 4, lines 21-23). This argument is unpersuasive because Laurisin recognizes that friction between the upper portion 19 and the bar 12 increases the holding power of the securement of the webbing 25 (col. 2, lines 23-27). Contrary to applicant's argument, Laurisin provides the motivation to modify Huber as indicated in col. 2, lines 23-27 so as to provide frictional securement and this is done through the complementary curvature of the upper portion 19 and bar 12.

### ***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of the action and the advisory action is not mailed until after the end of the **THREE MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of the final action.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to James R Brittain whose telephone number is 703-308-2222. The examiner can normally be reached on Monday - Friday from 5:30 to 2:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, J. J. Swann can be reached on 703-306-4115. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9326 for regular communications and 703-872-9327 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1113.

A handwritten signature in black ink, appearing to read 'J.R. Brittain', with a stylized flourish at the end.

James R Brittain  
Primary Examiner  
Art Unit 3677

JRB  
July 13, 2003